S.B. Civil Writ Petition NO.1068/2005

Dharam Narayan

vs

ADJ No.2, Udaipur & Ors.

DATE OF ORDER : - 29.3.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. T.Gupta, for the petitioner.

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Heard learned counsel for the petitioner.

Admittedly, the non-petitioners-appellants are in possession of the property in dispute, despite the fact that there are allegations of the petitioner that the non-petitioners took the possession of the property and raised construction high-handedly and that too, during the pendency of the suit, but fact remains is that the appropriate remedy would have been by filing application for disobedience of the court's order and which has been filed by the petitioner and petitioner could have got appropriate relief in those proceedings, but if the appellate court on the basis of the evidence available on record relied upon the 'Patta' produced by the defendants and took in account the permission granted by the Gram Panchayat and observed that it would not be in the

interest of any of the parties to deny the enjoyment of the property to the defendants, who raised the construction and is in possession, the first appellate court has not committed any error in the facts of this case and for all other remedies, which petitioner wants to have from this court like damages for use and occupation etc. can very well be claimed by the petitioner in this very suit itself and which can be granted by the court while deciding the issue on proving the case by the plaintiff, but there appears to be no reason to interfere in the order impugned passed under the proceedings under Order 39 Rule 1 and 2 CPC.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed. However, the trial court may decide the suit expeditiously.

(Prakash Tatia), J.

c.p.goyal/-